

REPRESENTATIVE FOR PETITIONERS:
John S. Dull, *pro se*

REPRESENTATIVE FOR RESPONDENT:
Sherry Stone-Lucas, Director of Real Estate

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

John S. Dull and Sharon A. Dull,)	Petition No.:	45-044-10-3-5-00176
)		
Petitioners,)	Parcel No.:	45-17-16-228-004.000-044
)		
v.)		
)		
Lake County Assessor,)	County:	Lake
)		
Respondent.)	Assessment Year:	2010

Appeal from the Final Determination of the
Lake County Property Tax Assessment Board of Appeals

January 23, 2013

ORDER OF DISMISSAL

The Indiana Board of Tax Review (the Board) has reviewed the facts and evidence, and having considered the issues, now finds and concludes the following:

FINDINGS OF FACT AND CONCLUSIONS OF LAW

ISSUE

1. The issue presented for consideration by the Board is whether two Indiana statutes freezing Lake County's tax levy unless a local option income tax is passed and removing the ability to pass such a tax by the Lake County Income Tax Council are unconstitutional. The Board, *sua sponte*, raises the issue of whether it has jurisdiction to hear the Petitioners' claims.

PROCEDURAL HISTORY

2. On August 17, 2011, the Petitioners initiated their 2010 assessment appeal with the Lake County Property Tax Assessment Board of Appeals (PTABOA) by filing a Form 133 Application for Correction of Error. The Form 133 petition was denied by the assessor and auditor on August 22, 2011, and forwarded to the Board on September 22, 2011. The Lake County PTABOA also issued a separate written determination on September 9, 2011. In response, the Petitioners filed a Form 131 Petition with the Board dated September 23, 2011. However, the Petitioners specifically noted on their appeal form that "this is a Form 133 appeal."

HEARING FACTS AND OTHER MATTERS OF RECORD

3. Pursuant to Indiana Code § 6-1.1-15-4 and § 6-1.5-4-1, the duly designated Administrative Law Judge (ALJ), Tom Martindale, held a hearing on October 29, 2012, in Crown Point, Indiana.
4. The following persons were present and sworn in at hearing:

For Petitioners: John S. Dull, property owner,¹

¹ Mr. Dull's assistant Stacy M. Hazard was also present at the hearing but was not sworn in.

For Respondent: Sherry Stone-Lucas, Director of Real Estate, Lake County Assessor's Office

5. The Petitioners presented the following exhibits:

- Petitioner Exhibit 1 – Affidavit of John S. Dull,
- Petitioner Exhibit 2 – Letter dated September 22, 2011, from the Lake County Auditor
- Petitioner Exhibit 3 – Lake County PTABOA's denial of Petitioner's appeal dated September 7, 2011,
- Petitioner Exhibit 4 – Affidavit of John S. Dull dated December 8, 2011,
- Petitioner Exhibit 5 – Affidavit of Sharon A. Dull dated December 8, 2011,
- Petitioner Exhibit 6 – Copy of a money order in the amount of \$50.00,
- Petitioner Exhibit 7 – Affidavit of Auditor Peggy Katona dated March 20, 2012,
- Petitioner Exhibit 8 – Indiana Code § 6-1.1-18.5-2,
- Petitioner Exhibit 9 – Indiana Code § 6-1.1-1,
- Petitioner Exhibit 10 – Indiana Code § 6-3.5-6-32,
- Petitioner Exhibit 11 – Action list for House Bill 1478, 2007 Session,
- Petitioner Exhibit 12 – Indiana Code § 6-3.5-1.1,
- Petitioner Exhibit 13 – Indiana Code § 6-3.5-6,
- Petitioner Exhibit 14 – Indiana Code § 6-3.5-7,
- Petitioner Exhibit 15 – Chart of cities and towns by County,
- Petitioner Exhibit 16 – 2007 Local Option Income Taxes in effect for 2007,
- Petitioner Exhibit 17 – Indiana Handbook of Revenue and Appropriations for 2007,
- Petitioner Exhibit 18 – Indiana Code § 36-2-3.5,
- Petitioner Exhibit 19 – Indiana Code § 36-2-4,
- Petitioner Exhibit 20 – Chart and affidavit prepared by Larry Blanchard dated December 8, 2011,
- Petitioner Exhibit 21 – Affidavit of Commissioner Gerry Scheub dated September 24, 2012,
- Petitioner Exhibit 22 – Affidavit of Sheriff John Buncich dated August 16, 2012,
- Petitioner Exhibit 23 – Distribution of Local Option Income Taxes in effect for 2010,
- Petitioner Exhibit 24 – Indiana Handbook of Revenue and Appropriations for 2010,
- Petitioner Exhibit 25 – Lake County Council Minutes from December 18, 2007, and December 28, 2007,
- Petitioner Exhibit 26 – Lake County Commissioner Minutes from December 19, 2007,
- Petitioner Exhibit 27 – Brief in Support of Appeal,
- Petitioner Exhibit 28 – Summaries of Witness Testimony to be Presented at Hearing,
- Petitioner Exhibit 29 – Outline for Board Hearing.

6. The Respondent did not submit any evidence at the hearing.
7. The following additional items are officially recognized as part of the record of proceedings and labeled as Board Exhibits:

Board Exhibit A – Petitioners’ Form 133 and Form 131 petitions,
Board Exhibit B – Hearing sign-in sheet,
Board Exhibit C – Notice of hearing dated August 30, 2012.

8. Although the Petitioners identify the property on which they pay property taxes as located at 1743A Beachview Court, in Crown Point, they do not dispute the PTABOA’s assessment determination; instead the Petitioners contend that the statutes affecting the Lake County general fund levy are unconstitutional.

PARTIES’ CONTENTIONS

9. The Petitioners contend that Indiana Code § 6-1.1-18.5-2(c) and Indiana Code § 6-3.5-6-32(j) are unconstitutional. The Petitioners presented the following evidence in support of their contentions:

A. Mr. Dull argues that Indiana Code § 6-1.1-18.5-2(c) and Indiana Code § 6-3.5-6-32(j) are unconstitutional because they apply only to Lake County. *Dull argument; Petitioner Exhibit 27 at 1.* According to Mr. Dull, Indiana Code § 6-1.1-18.5-2(c) freezes the size of the general fund levy in Lake County unless or until the county adopts a county adjusted gross income tax (CAGIT); or a county option income tax (COIT). *Id.* And Indiana Code § 6-3.5-6-32(j) transfers the authority to enact a COIT from the Lake County Income Tax Council to the Lake County Council. *Id.*

B. Indiana Code § 6-1.1-18.5-2 provides a calculation for determining the “growth quotient” to apply to a civil taxing unit's maximum permissible ad valorem property tax levy. Subsection (c), however provides that “Notwithstanding any other provision, for property taxes first due and payable after December 31, 2007, the

assessed value growth quotient used to determine a civil taxing unit's maximum permissible ad valorem property tax levy under this chapter for a particular calendar year is one (1) unless a tax rate of one percent (1%) will be in effect under IC 6-3.5-1.1-26 or IC 6-3.5-6-32 in Lake County for that calendar year.” Indiana Code § 6-1.1-18.5-2(c). The statute specifically states: “This subsection applies only to civil taxing units in Lake County.” *Id.* Mr. Dull argues that there is a discriminatory requirement that Lake County have a CAGIT or COIT of 1% for its property tax levy to increase, but other counties do not have to meet this requirement. *Id. at 15.* In fact, other counties have either a CAGIT or a COIT of less than 1% without a frozen levy. *Id. at 15.* Further, the statute does not permit Lake County to pass a county economic development income tax (CEDIT) in order to unfreeze its maximum levy, but Mr. Dull argues Indiana counties with only a CEDIT do not have a frozen levy. *Petitioner Exhibit 27 at 3; Petitioner Exhibit 8.*

- C. In addition, the Petitioner argues that Indiana Code § 6-3.5-6-32(j) is unconstitutional because it takes the ability to pass a COIT away from the Lake County Income Tax Council – which is made up of the fiscal bodies of all of the cities and towns plus the county representing the unincorporated area. *Petitioner Exhibit 27 at 8.* Mr. Dull argues that in every other county it only takes 50.01% of the votes of a county income tax council to pass a COIT; while in Lake County it takes 57% of the county council vote to pass a COIT. *Id.* Moreover, because the Lake County Council must pass the income tax, the Lake County Commissioners can veto the legislation – unlike in counties where the income tax council passes the tax. *Id.* And if the county commissioners veto the income tax, Mr. Dull argues, it will require 71.4% of the council’s votes to over-ride the commissioners’ veto. *Id.* Moreover, Lake County and St. Joseph County have the same form of government; yet the statute does not apply to St. Joseph County. *Id. at 12.* It only applies to Lake County. *Id.*
- D. Mr. Dull argues that, prior to 2007, there were no county specific rules limiting the growth of a civil taxing unit’s general fund levy. *Petitioner Exhibit 27 at 4.* The only limitation prior to 2007 was that growth could not exceed the six year average

increase in the statewide non-farm personal income or 6% whichever was less. *Id.* This limitation was not specific to Lake County, but applied to all counties. *Id.*

- E. With the legislative freeze on its maximum levy, Mr. Dull contends that Lake County is not able to provide the same level of services as it did in 2007. *Petitioner Exhibit 27 at 2; Petitioner Exhibits 21 and 22.* According to Mr. Dull, the impact of this change is felt by every city, town, and local governmental unit in Lake County as well as county government itself. *Petitioner Exhibit 27 at 4; Petitioner Exhibit 9.* For example, Mr. Dull argues, the restrictions have adversely affected the Lake County Circuit and Superior Court system in which he practices law. *Petitioner Exhibit 27 at 2.* Without the levy freeze, Mr. Dull argues, the general fund tax levies of Lake County's civil taxing units would have increased from \$112,296,260 in 2008 to \$132,978,417 in 2012. *Petitioner Exhibit 27 at 9; Petitioner Exhibit 20.*
- F. The Petitioners argue that both Indiana Code § 6-1.1-18.5-2(c) and Indiana Code § 6-3.5-6-32(j) violate the substantive due process clause and the equal protection clause of the 14th Amendment of the United States Constitution. *Dull argument; Petitioner Exhibit 27 at 3.* Mr. Dull argues that the statutes are unconstitutional on their face because the levy in Lake County cannot increase unless it adopts a local option income tax; while each of the other 91 counties in the state could repeal their income tax and their levy would still increase. *Dull argument.* Mr. Dull explains that when statutes are challenged on their face, the analysis focuses upon the language itself as written, thus the statute is to be viewed on the "four corners of the document." *Petitioner Exhibit 27 at 10.* Further, Mr. Dull argues that whether a statute is constitutional on its face is a question of law. *Id. at 10, citing LaRose v. State, 820 N.E.2d 727 (Ind. Ct. App. 2005), transfer denied; Cole v. State, 790 N.E.2d 1049 (Ind. Ct. App. 2003), transfer denied; and 804 N.E.2d 750 (Ind. 2003).*
- G. The Petitioners also argue that the statutes violate the substantive due process clause and the equal protection clause of the 14th Amendment of the United States Constitution as applied. *Dull argument.* According to Mr. Dull, substantive due

process requires that taxation not be “arbitrary, oppressive or unjust.” *Petitioner Exhibit 27 at 11, citing Town of St. John v. Board of Tax Commissioners*, 690 N.E.2d 370, at 391. Mr. Dull contends that the statutes violate the substantive due process clause because the goal of the General Assembly is to have a LOIT in every Indiana County to provide ad valorem property tax relief; however, it is arbitrary, unreasonable, and irrational to make it harder to enact a LOIT in Lake County. *Id. at 15*. Mr. Dull similarly argues that the statutes violate the equal protection clause because there is no rational basis or legitimate state purpose for having a classification system which requires Lake County to have a CAGIT or COIT of 1% for levy growth, eliminating CEDIT from a qualifying tax, and then transferring the COIT enactment power to the Lake County Council. *Petitioner Exhibit 27 at 16*.

- H. In addition, the Petitioners argue that the two statutes violate the privileges and immunities provision of Article I, Section 23, of the Indiana Constitution. *Petitioner Exhibit 27 at 23*. Mr. Dull explains that under this article of the Indiana Constitution, preferential treatment must be uniformly applicable and equally available to all persons similarly situated. *Id.* Thus, the Petitioner argues because Lake County and St. Joseph County have the same form of government, they should be treated the same; however, they are not. *Dull argument; Petitioner Exhibit 27 at 26*.
- I. Finally, the Petitioners argue that the two statutes violate the special legislation provision of Article IV, Section 23, of the Indiana Constitution. *Dull argument; Petitioner Exhibit 27 at 18*. Mr. Dull argues that according to the Indiana Supreme Court in the *Kimsey* case, a two part analysis is used to determine whether a statute is impermissible special legislation. *Id. at 19 citing Municipal City of South Bend v. Kimsey*, 781 N.E.2d at 692 (Ind. 2003). Mr. Dull argues that the first issue is to determine if the statute is special legislation, which the Petitioner argues is met automatically because the general assembly intended the statutes to only apply to Lake County. *Dull argument; Petitioner Exhibit 27 at 19*. The second issue that must be examined when special legislation is involved is whether there are any unique characteristics of a county that would warrant a special statute, or whether you

could have a statute and pass it without making a special statute. *Id.* Mr. Dull argues that the absence of a local option income tax in Lake County may be “a difference”; but it would have been easy for the general assembly to create a general law stating that the levy of any county that does not have a local income tax is frozen. *Dull argument; Petitioner Exhibit 27 at 21.*

10. The Respondent contends that the Petitioners’ case is outside of the scope of the Assessor’s office. *Stone-Lucas argument.* And, in fact, Ms. Stone-Lucas argues, the issues raised by the Petitioners in this appeal are beyond the Assessor’s realm of decision making. *Id.*

ANALYSIS

11. The Petitioners are not contesting the subject property’s assessment. Instead, the Petitioners are challenging the constitutionality of Indiana Code § 6-1.1-18.5-2(c) and Indiana Code § 6-3.5-6-32(j). The Petitioners contend that these challenged statutes establish a classification and operational process where the general fund levy of Lake County’s civil taxing units is frozen. The Board however does not reach this issue. Instead, the Board finds as a threshold matter that it lacks jurisdiction to hear the Dulls’ appeal.

12. The Board is a creation of the legislature, and it has only those powers conferred by statute. *Matonovich v. State Bd. of Tax Comm’rs*, 705 N.E.2d 1093, 1096 (Ind. Tax Ct. 1999). The relevant statute is Indiana Code § 6-1.5-4-1, which provides as follows:

- (a) The Indiana board shall conduct an impartial review of all appeals concerning:
 - (1) the assessed valuation of tangible property;
 - (2) property tax deductions;
 - (3) property tax exemptions;
 - (4) property tax credits;that are made from a determination by an assessing official or county property tax assessment board of appeals to the Indiana board under any law.
- (b) Appeals described in this section shall be conducted under IC 6-1.1-15.

This version of the statute reflects an amendment, effective July 1, 2011, adding new authority in subsection 4 to review tax credits.

18. The Petitioners' case, on its face, addresses Lake County's budget levy and local option income taxes. The Board has no jurisdiction over Lake County's budget or local income tax issues. And while arguably the county's maximum budget levy has some impact on the property taxes the Petitioners paid in 2010, the Board has no jurisdiction over property taxes or tax rates. The Petitioners raise no issue with the assessed value of their property. Nor do they seek a property tax deduction, exemption or credit. The Board therefore lacks the subject matter jurisdiction to afford the Petitioners the relief they seek.

SUMMARY OF FINAL DETERMINATION

The Board lacks jurisdiction to address the Petitioners' claim regarding the constitutionality of the challenged statutes. In accordance with the above findings and conclusions of law, the Board now **DISMISSES** the Petitioners' appeal.

Chairman, Indiana Board of Tax Review

Commissioner, Indiana Board of Tax Review

Commissioner, Indiana Board of Tax Review

IMPORTANT NOTICE

- APPEAL RIGHTS -

You may petition for judicial review of this final determination under the provisions of Indiana Code § 6-1.1-15-5, as amended effective July 1, 2007, by P.L. 219-2007, and the Indiana Tax Court's rules. To initiate a proceeding for judicial review you must take the action required within forty-five (45) days of the date of this notice. The Indiana Tax Court Rules are available on the Internet at <<http://www.in.gov/judiciary/rules/tax/index.html>>. The Indiana Code is available on the Internet at <<http://www.in.gov/legislative/ic/code>>. P.L. 219-2007 (SEA 287) is available on the Internet at <<http://www.in.gov/legislative/bills/2007/SE/SE0287.1.html>>.